

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re Application of

BANCO SANTANDER (BRASIL) S.A.

For an Order Pursuant to 28 U.S.C. § 1782 to Conduct
Discovery for Use in Foreign Proceedings

Case No. 22 Misc. _____

**DECLARATION OF THOMAS VANDENABEELE IN SUPPORT OF
EX PARTE APPLICATION FOR DISCOVERY PURSUANT TO 28 U.S.C. § 1782**

I, Thomas Vandenabeele, pursuant to Title 28 U.S.C. § 1746, hereby declare under penalty of perjury as follows:

1. I am a partner at the law firm of Kellner Herlihy Getty & Friedman LLP, New York counsel for Applicant BANCO SANTANDER (BRASIL) S.A. (“Applicant”), and am duly admitted to practice before this Court.

2. I respectfully submit this Declaration in support of the application for judicial assistance pursuant to 28 U.S.C. § 1782, seeking an order authorizing intermediary bank discovery from The Clearing House Payments Company, LLC (“TCH”) and certain banks found in this District for use in a pending foreign proceeding before the 2nd Civil Court of São Paulo, in Brazil, by Applicant against Ducoco Produtos Alimentícios S/A, Ducoco Alimentos S/A, Malibu Holing S/A, and Nelson Nogueira Pinheiro (the “Foreign Defendants”) to enforce Export Credits Notes¹ (“Foreign Proceeding”). See accompanying Declaration of Felipe Vieira dated January 19, 2022, ¶¶ 2, 3, 13, 15.

3. I submit this Declaration to provide the Court with information relevant to the requested discovery, the entities found in this District from which discovery is sought, and a

¹ Unless otherwise indicated, capitalized terms or names not otherwise defined herein shall have the meaning ascribed to them in the Declaration of Felipe Vieira dated January 19, 2022.

basic understanding of the bank's system that process and maintain records concerning U.S. Dollar denominated wire transfers.

The Requested Discovery

4. Applicant seeks to obtain meaningful information from entities located in this District that are in the business of processing wire transfers and payments in New York City, and will have processed wire transfers and payments relevant and probative to plead and prove Applicant's Contemplated Claims sounding in fraudulent conveyance and piercing the corporate veil, in that the Foreign Defendants have concealed and intentionally misappropriated their property in order to defraud Applicant and avoid repayment of the Export Credits Notes. Vieira Declaration, ¶¶18, 21, 36-45.

5. Applicant seeks discovery from Citibank, N.A.; The Bank of New York Mellon; Société Générale, New York Branch; HSBC Bank USA, N.A.; BNP Paribas USA; JPMorgan Chase Bank, N.A.; Barclays Bank PLC; Bank of America, N.A.; Wells Fargo Bank, N.A. (collectively, the "New York Banks"); and TCH (collectively, the "Respondents"). *Id.*, ¶38.

6. The Declaration of Felipe Vieira submitted in support of the Application explains at length how records relating to wire transfers and payments obtained from the Respondents are necessary in the Foreign Proceedings. *Id.*, ¶¶36-45. It explains that "wire transactions routed through New York City and documents relating thereto will reveal the information sought by Applicant to advance its Contemplated Claims in the Foreign Proceedings" (*Id.*, ¶41), that "the Foreign Defendants have fraudulently concealed or misappropriated assets that should have been used to pay Applicant's debt under the Export Credit Notes, resulting in fraudulent conveyances, and that the Brazilian Court should pierce the corporate veil of Nelson's related companies which he utilized in conducting his fraudulent scheme" (*Id.*, ¶39).

7. The discovery sought in this proceeding directly relates to the Respondents' business in this District—namely, wire transfers for which the Respondents were involved as originating bank, beneficiary bank, intermediate or correspondent bank to CHIPS, Fedwire, or where the Respondents otherwise facilitated interbank funds transfers, as well as documents relating thereto. *Id.*, ¶¶38-42. As set forth below, each of the Respondents reside or is found in this District.

The Respondents reside or are found within this district

8. Based on my personal experience, and my firm Kellner Herlihy Getty & Friedman LLP's experience in obtaining bank account and wire transfer records in numerous cases including in this Court, the New York Banks act as correspondent or intermediary banks in this District for wire transfers passing from domestic to international banks, and vice versa.

9. The New York Banks are either participants in the Clearing House Interbank Payments System ("CHIPS"), which is the largest private sector U.S. Dollar clearing system in the world,² the Federal Reserve's Fedwire Fund Service ("Fedwire"), or a major participant in the clearing of international U.S. Dollar denominated transfers. A list of CHIPS participants established by TCH is attached hereto as **Exhibit A**, and printouts of Fedwire's website showing some of the New York Banks as Fedwire participants is attached hereto as **Exhibit B**.

10. Bank of America, N.A. ("BOA") is a financial services institution that regularly transacts business in this District and maintains at least sixty-two (62) branches in New York City, including at 1680 Broadway, New York, NY 10019. Excerpts relevant to this Application from the Accuity Bank Directory, U.S. Dependencies, for December 2017-May 2018 are

² <https://www.theclearinghouse.org/payment-systems/chips> (last visited December 28, 2021) (generally describing the CHIPS system).

attached hereto as **Exhibit C.**³ (Ex. C at p.72, listing BOA's branches in New York City). BOA in New York City is a CHIPS and Fedwire participant. (Exs. A-B.) BOA in New York City acts as a worldwide correspondent bank for U.S. Dollar denominated wire transfers passing from domestic banks to international banks (and vice versa), including banks located in Brazil. Excerpts relevant to this Application from the Accuity Bank Directory, Worldwide Correspondents, for December 2017-May 2018 are attached hereto as **Exhibit D.** Ex. D at pp. 184-192.

11. Citibank, N.A. ("Citibank") is a financial services institution that regularly transacts business in this District and maintains its headquarters at 388 Greenwich Street, New York, New York 10013.⁴ Citibank in New York City is a CHIPS and Fedwire participant. (Exs. A-B.) Citibank in New York City acts as a worldwide correspondent bank for U.S. Dollar denominated wire transfers passing from domestic banks to international banks (and vice versa), including a bank located in Brazil. Ex. D at p. 185-192.

12. The Bank of New York Mellon ("BNY Mellon") is a financial services institution that regularly transacts business in this District and maintains its headquarters at 240 Greenwich Street, New York, New York 10286.⁵ BNY Mellon in New York City is a CHIPS and Fedwire participant. (Exs. A-B.) BNY Mellon in New York City acts as a worldwide correspondent bank for U.S. Dollar denominated wire transfers passing from domestic banks to international banks (and vice versa), including banks located in Brazil. Ex. D at pp. 184-188 and 190-192.

13. HSBC Bank USA, N.A. ("HSBC") is a financial services institution that regularly transacts business in this District and maintains its headquarters at 452 5th Avenue, New York,

³ Should the Court need the entire volume, I will promptly provide it.

⁴ <https://www.citigroup.com/citi/about/countries-and-jurisdictions/united-states-usa.html> (last visited December 28, 2021) (indicating the location of Citibank's headquarters in New York City).

⁵ <https://www.bnymellon.com/us/en/contact.jsp> (last visited December 29, 2021) (indicating the location of BNY Mellon's headquarters in New York City).

New York 10018.⁶ HSBC in New York City is a CHIPS participant. (Ex. A.) HSBC in New York City acts as a worldwide correspondent bank for U.S. Dollar denominated wire transfers passing from domestic banks to international banks (and vice versa), including banks located in Brazil. Ex. D at pp. 185 and 192.

14. JP Morgan Chase Bank, N.A. (“JP Morgan”) is a financial services institution that regularly transacts business in this District and maintains its headquarters at 270 Park Avenue, New York, New York 10017. JP Morgan in New York City is a CHIPS and Fedwire participant. (Exs. A-B.) JP Morgan in New York City acts as a worldwide correspondent bank for U.S. Dollar denominated wire transfers passing from domestic banks to international banks (and vice versa), including banks located in Brazil. Ex. D at pp. 185 and 189-192.

15. Barclays Bank PLC (“Barclays”) is a financial services institution that regularly transacts business in this District and maintains several branches in New York City including at 200 Park Avenue, New York, NY 10016. (Ex. C at p.73.) Barclays in New York City is a CHIPS and Fedwire participant. (Exs. A-B.) Barclays is also registered with the NYSDFS (**Exhibit E.**) Barclays in New York City acts as a worldwide correspondent bank for U.S. Dollar denominated wire transfers passing from domestic banks to international banks (and vice versa), including a bank located in Brazil. Ex. D at p. 187.⁷ In fact, on December 18, 2018, Barclays in New York signed a consent order with the NYDFS under New York Banking Law §§ 39 and 44 relating to its U.S. Dollar clearing business in New York City.⁸

⁶ <https://www.sec.gov/Archives/edgar/data/83246/000095012311019150/c62398e10vk.htm> (last visited December 29, 2021).

⁷ <https://www.fdic.gov/regulations/reform/resplans/plans/barclays-165-1807.pdf> (last visited December 29, 2021) (July 2018 Barclays U.S. Resolution Plan, generally describing Barclays’s US Dollar clearing activities in New York at p.38: “NYBR’s primary activities are deposit taking, lending, management of Barclays’s USD funding positions and US dollar clearing.”)

⁸ https://www.dfs.ny.gov/system/files/documents/2019/01/ea181218_barclays.pdf (last visited December 29, 2021) (see at ¶9 “Barclays operates a number of important business lines out of the New York Branch, including [...]

16. BNP Paribas USA (“BNP”) is a financial services institution that regularly transacts business in this District and maintains a branch at 787 7th Avenue, The Equitable Tower, New York, NY 10019. (Ex. C at p.73.) BNP in New York City is a CHIPS and Fedwire participant. (Exs. A-B.) BNP is also registered with the New York Department of Financial Services (“NYDFS.”) (**Exhibit E**). BNP in New York City acts as a worldwide correspondent bank for U.S. Dollar denominated wire transfers passing from domestic banks to international banks (and vice versa),⁹ including a bank located in Brazil. Ex. D at p. 187.

17. Société Générale, New York Branch (“SGNY”), is a financial services institution that regularly transacts business in this District and maintains its head office at 245 Park Avenue, New York, NY 10167.¹⁰ SGNY is a CHIPS and Fedwire participant. (Exs. A-B.) SGNY is also registered with the NYDSF. (Ex. E.) SGNY acts as a worldwide correspondent bank for U.S. Dollar denominated wire transfers passing from domestic banks to international banks (and vice versa), including a bank located in Brazil. Ex. D at p. 191.¹¹

18. Wells Fargo Bank, N.A. (“Wells Fargo”) is a financial institution that regularly transacts business in this District and maintains at least ten branches in New York City, including at 2330 Broadway, New York, NY 10024. Ex. C at p.87, listing Wells Fargo’s branches in New York City. Wells Fargo in New York City is a CHIPS and Fedwire participant. Exs. A-B. Wells Fargo in New York City acts as a worldwide correspondent bank for U.S. Dollar denominated

management of Barclays’ U.S. dollar funding position and dollar payments clearing, settlement of foreign exchange trades in U.S. dollars, and corporate accounts.”)

⁹ <https://www.federalreserve.gov/supervisionreg/resolution-plans/bnp-paribas-2g-20181231.pdf> (last visited December 29, 2021) (December 2018 BNP U.S. Resolution Plan, generally describing BNP’s US Dollar clearing activities in New York at pp.9,19: “the BNPP New York Branch acts as the U.S. dollar warehouse for the Group.”)

¹⁰ <https://americas.societegenerale.com/en/locations/worldwide-details/office/societe-generale-branch-americas-securities-llc-locations/> (last visited December 29, 2021) (indicating the location of SGNY’s head office in New York City).

¹¹ <https://www.federalreserve.gov/supervisionreg/resolution-plans/societe-generale-3g-20181231.pdf> (last visited December 29, 2021) (December 2018 Société Générale U.S. Resolution Plan, generally describing SGNY’s US Dollar clearing activities in New York at p.15).

wire transfers passing from domestic banks to international banks (and vice versa), including banks located in Brazil. Ex. D at pp. 185-190 and 192.

19. TCH provides both transmission of instruction messages and settlement of funds between financial institutions that are used to process international U.S. Dollar funds transfers made among international banks. TCH maintains its headquarters in New York City at 1114 Avenue of the Americas, New York, NY 10036. A printout of TCH's website indicating its headquarters in New York City is attached hereto as **Exhibit F**.

20. The six-year temporal scope of the discovery sought here is likely within the Respondents' document retention policies. The Respondents keep electronic records of wire and money transfers and are thus able to easily search and produce these records and have done so in response to dozens of subpoenas I and my law firm have executed in connection with numerous domestic litigations, bankruptcy proceedings, and Section 1782 applications such as this.

21. The Respondents produce such records routinely and without significant cost or objection, and begin producing these records as early as two weeks after receipt of the subpoena.

22. This Court has repeatedly granted 1782 applications authorizing intermediary bank discovery from the Respondents, including but not limited to the applications identified in paragraphs 23 to 32 below.

23. *In re Application of Tianrui (International) Holding Company Limited*, 19-mc-545 (JMF) (S.D.N.Y. November 26, 2019) (Holding Section 1782's statutory requirements are met and authorized discovery from the New York Banks from whom discovery is sought here—Citibank, BNY Mellon, HSBC, JP Morgan, SGNY, BNP, Barclays, Deutsche Bank, Bank of Nova Scotia, UBS AG, BOA, Standard Chartered Bank, Commerzbank AG—and TCH).

24. *In Re Application of Moco Management Inc.*, 19-mc-71(KPF) (S.D.N.Y. August 19, 2019) (Holding Section 1782’s statutory requirements are met and authorized discovery from some of the New York Banks from whom discovery is sought here—U.S. Bank; Comerica Bank; Bank of Montreal of Canada; JP Morgan Chase Bank, N.A.; Wells Fargo Bank, N.A.; Bank of America, N.A.; and The Clearing House Payments Company LLC).

25. *In Re Application of Bloomfield Investments LLC*, 18-mc-514 (VSB) (S.D.N.Y. January 18, 2019) (holding that some of the New York Banks from whom discovery is sought here—Citibank, BNY Mellon, HSBC, JP Morgan, Barclays and BOA—“reside or are found in the Southern District of New York” based on the location of their head offices or branches in this District).

26. *In Re Application of Weatherford Oil Tool Middle East Ltd.*, 18-mc-412 (VEC) (S.D.N.Y. September 7, 2018) (holding that the New York Banks from whom discovery is sought here—Citibank, BNY Mellon, HSBC, JP Morgan, SGNY, BNP, Barclays, Deutsche Bank, Bank of Nova Scotia, UBS AG, BOA, Standard Chartered Bank, Commerzbank AG—and TCH “reside or are found in the Southern District of New York” based on their head offices or branches in this District).

27. *In Re Application of Thomas Forrest Austin Jr.*, 18-mc-321 (PGG) (S.D.N.Y. August 10, 2018) (holding that the New York Banks from whom discovery is sought here—Citibank, BNY Mellon, HSBC, JP Morgan, SGNY, BNP, Barclays, Deutsche Bank, Bank of Nova Scotia, UBS AG, BOA, Standard Chartered Bank, Commerzbank AG—and TCH “reside or are found in the Southern District of New York” based on their head offices or branches in this District).

28. *In Re Application of John Edmund Paylor, as Trustee in Bankruptcy of Junie Conrad Omari Bowers, as trustee in Bankruptcy of Andrew Nathaniel Skeene, and as Liquidator of Proximity Ventures Ltd. (in liquidation)*, (WHP) 17-mc-23 (S.D.N.Y. January 25, 2017) (holding that the New York Banks from whom discovery is sought here—Citibank, BNY Mellon, HSBC, JP Morgan, SGNY, BNP, Barclays, Deutsche Bank, Bank of Nova Scotia, UBS AG, BOA, Standard Chartered Bank, Commerzbank AG—and TCH “reside or are found in the Southern District of New York” based on their head offices or branches in this District).

29. *In Re Application of Carl Bowles and Robin Davis, as Trustees in Bankruptcy of Georgy Yurievich Trefilov*, 15-mc-221 (RA) (S.D.N.Y. July 23, 2015) (holding that the New York Banks from whom discovery is sought here—Citibank, BNY Mellon, HSBC, JP Morgan, SGNY, BNP, Barclays, Deutsche Bank, Bank of Nova Scotia, UBS AG, BOA, Standard Chartered Bank and Commerzbank AG—“reside or are found in the Southern District of New York” based on their head offices or branches in this District).

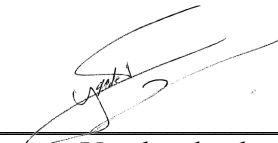
30. *In Re Application of Lisa Armoyan*, 15-mc-94 (RWS) (S.D.N.Y. April 14, 2015) (holding that some of the New York Banks from whom discovery is sought here—Citibank, BNY Mellon, HSBC, JP Morgan, SGNY, BNP, Barclays and BOA—“reside or are found in the Southern District of New York” based on their head offices or branches in this District).

31. *In Re Application of Novoship (UK) Limited, Cally Shipholdings Inc., Vital Shipping Corporation, Dainford Navigation Inc., Tamara Shipholdings S.A. and Tuscany Maritime S.A.*, 15-mc-72 (RMB) (S.D.N.Y. March 19, 2015) (holding that some of the New York Banks from whom discovery is sought here—Citibank, BNY Mellon, HSBC, JP Morgan, SGNY, BNP, Barclays, BOA and UBS AG—“reside or are found in the Southern District of New York” based on their head offices or branches in this District).

32. *In Re Application of Mohammad Anwar Fared Al-Saleh*, 15-mc-55 (JSF) (S.D.N.Y. March 3, 2015) (holding that some of the New York Banks from whom discovery is sought here—Citibank, BNY Mellon, HSBC, JP Morgan, SGNY, BNP, Barclays and BOA—“reside or are found in the Southern District of New York” based on their head offices or branches in this District).

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Dated: January 24, 2022

By: 
Thomas Vandenabeele

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